

(2) All claimants that are similarly situated under paragraph (a) of this section receive not less than the amount such claimants would have received if the receiver liquidated the assets and liabilities of the regulated entity in receivership and such action had not been taken.

(c) *Priority determined at default.* The receiver will determine priority based on a claim's status at the time of default, such default having occurred at the time of entry into the receivership, or if a conservatorship immediately preceded the receivership, at the time of entry into the conservatorship provided the claim then existed.

Subpart C—Limited-Life Regulated Entities

§ 1237.10 Limited-life regulated entities.

(a) *Status.* The United States Government shall be considered a person for purposes of section 1367(i)(6)(C)(i) of the Safety and Soundness Act.

(b) *Investment authority.* The requirements of section 1367(i)(4) shall apply only to the liquidity portfolio of a limited-life regulated entity.

(c) *Policies and procedures.* The Agency may draft such policies and procedures with respect to limited-life regulated entities as it determines to be necessary and appropriate, including policies and procedures regarding the timing of the creation of limited-life regulated entities.

§ 1237.11 Authority of limited-life regulated entities to obtain credit.

(a) *Ability to obtain credit.* A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

(b) *Inability to obtain credit.* If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity with priority over any and all of the obligations of the limited-life regulated entity, secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien, or secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

(c) *Limitations.* The Director, after notice and a hearing, may authorize a limited-life regulated entity to obtain credit or issue debt that is secured by a senior or equal lien on property of the limited-life regulated entity that is already subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an Enterprise) only if the limited-life regulated entity is unable to obtain such credit or issue such debt otherwise on commercially reasonable terms and there is adequate protection of the interest of the holder of the earlier lien on the property with respect to which such senior or equal lien is proposed to be granted.

(d) *Adequate protection.* The adequate protection referred to in paragraph (c) of this section may be provided by:

(1) Requiring the limited-life regulated entity to make a cash payment or periodic cash payments to the holder of the earlier lien, to the extent that there is likely to be a decrease in the value of such holder's interest in the property subject to the lien;

(2) Providing to the holder of the earlier lien an additional or replacement lien to the extent that there is likely to be a decrease in the value of such holder's interest in the property subject to the lien; or

(3) Granting the holder of the earlier lien such other relief, other than entitling such holder to compensation allowable as an administrative expense under section 1367(c) of the Safety and Soundness Act, as will result in the realization by such holder of the equivalent of such holder's interest in such property.

Subpart D—Other

§ 1237.12 Capital distributions while in conservatorship.

(a) Except as provided in paragraph (b) of this section, a regulated entity shall make no capital distribution while in conservatorship.

(b) The Director may authorize, or may delegate the authority to authorize, a capital distribution that would otherwise be prohibited by paragraph (a) of this section if he or she determines that such capital distribution: